

Justin D. Leonard, OSB 033736

Direct: 971.634.0192

Email: jleonard@LLG-LLC.com

Timothy A. Solomon, OSB 072573

Direct: 971.634.0194

Email: tsolomon@LLG-LLC.com

LEONARD LAW GROUP LLC

111 SW Columbia, Ste. 1100

Portland, Oregon 97201

Fax: 971.634.0250

Counsel for Evergreen Aviation and
Space Museum and the Captain Michael
King Smith Education Institute, an Oregon
nonprofit corporation

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

The Michael King Smith Foundation,

Debtor.

Case No. 16-30233-rlld11

**OBJECTION OF EVERGREEN
AVIATION AND SPACE MUSEUM AND
THE CAPTAIN MICHAEL KING SMITH
EDUCATIONAL INSTITUTE TO
PROPOSED SALE OF ASSETS TO
GEMCAP LENDING I, LLC**

Evergreen Aviation and Space Museum and the Captain Michael King Smith Educational Institute (the “**Evergreen Museum**”) hereby objects to the proposed sale of substantially all of the assets of Debtor Michael King Smith Foundation (“**MKSF**”) to GemCap Lending I, LLC (“**GemCap**”), and in support thereof respectfully states as follows:

PRELIMINARY STATEMENT

The proposed sale of the MKSF assets to The Falls Event Center (“**TFEC**”) will provide significant tangible and intangible benefits to the Evergreen Museum and the community at large, including among other things: \$1.68 million in donations TFEC has committed to make to the Evergreen Museum in 2017 and 2018; TFEC’s agreement to enter into a new 30-year, no rent lease of the Space Building to the Evergreen Museum; TFEC’s waiver, release and

forgiveness of a contested \$1.7 million property tax debt of the museum; expertise to be provided going forward by TFEC-affiliated employees; and the transition of certain special events and activities from the Evergreen Museum to TFEC, which will allow the Evergreen Museum to engage in additional cost-cutting, mission-focused operations without affecting the services and programs the Evergreen Museum provides to the community.

A sale of the MKSF assets to GemCap, on the other hand, would provide none of these benefits. The alleged property tax obligation issue would remain unresolved, and the museum could lose millions in other expected revenue stemming from the contemplated sale to TFEC. In short, a sale to GemCap would have been detrimental to the Evergreen Museum.

The Evergreen Museum understands the Court's desire that a sale be consummated as soon as possible – and still expects the TFEC sale to close by the August 20, 2016 deadline. However, the museum objects to any sale of the MKSF assets to GemCap, and respectfully submits that any sale transaction with GemCap should not be entered into hastily even if the August 20 deadline should pass.

FACTS SUPPORTING OBJECTION

This Objection is supported by the Declaration of Ann Witsil, the Interim Executive Director of Evergreen Aviation and Space Museum and the Captain Michael King Smith Educational Institute. As set forth therein:

1. The Evergreen Museum has been and continues to be a valuable asset to the greater McMinnville community, the State of Oregon, to visitors to the Evergreen Museum, to educators, students from kindergarten through high school, and to the parents of these students. *See Declaration of Ann Witsil at ¶ 5.*

2. On July 11, 2016, at a Special Board Meeting, the Evergreen Museum Board of Directors approved the sale of the MKSF assets to TFEC¹ and the Evergreen Museum-

¹ References to TFEC herein include any TFEC-affiliated entities including, but not necessarily limited to, The Falls at McMinnville ("TFM"), which the museum understands has been

TFEC agreements that are related to the sale regarding TFEC's financial commitments to the Evergreen Museum and its commitments of intangible value to the Evergreen Museum. *Id.* ¶ 7.

3. The Interim Executive Director of the Evergreen Museum, Chief Financial Officer, Chief Operation Officer and Museum Board President each personally met and spoke with Steven Down, the principal owner of TFEC, on a number of occasions regarding TFEC's interest in buying the MKSF assets, partnering with the Evergreen Museum in the future, providing donations to the Evergreen Museum, and utilizing the MKSF assets to help the Evergreen Museum survive and thrive. *Id.* ¶ 8.

4. The museum has concluded that the sale of the MKSF assets to TFEC is the best possible outcome in this matter and will best serve the Museum's interests and the community's interest now and in the future. All other proposals by different buyers to acquire the MKSF assets, including the GemCap proposal, would not bring the same advantages and synergies that will be realized with an Evergreen Museum-TFEC partnership, for the reasons set forth below. *Id.* ¶ 9.

5. A sale of MKSF assets to TFEC has a tangible value to the Museum of more than \$3 million in 2017 and 2018, almost \$7 million over the next seven years, and potentially in excess of \$20 million over a thirty-year period. These valuations do not account for the increase in business to the Museum based on the marketing and development plans of TFEC as described in this declaration. *Id.* ¶ 10.

6. TFEC has committed to making \$1.68 million in donations to the Evergreen Museum in 2017 and 2018. These donations become irrevocable upon closing of the sale and execution of a Donation Agreement (which is in final form and agreed upon by Evergreen Museum and TFEC and is waiting signature by the authorized representatives) and will be secured with collateral. TFEC has also committed to making donations to the Evergreen

assigned and assumes the responsibilities of the Asset Purchase Agreement dated June 22, 2016.

Museum of \$300,000 per year thereafter for up to thirty years, beginning in 2019. Those donations, combined, total \$10.68 million over thirty years. *Id.* ¶ 11.

7. TFEC has agreed to enter into a new lease on the Space Building with the Museum for thirty years at no rent. The Space Building is one of two buildings that holds and displays the vast majority of the Museum aircraft and artifacts, which is open to the general public seven days per week, and which holds and hosts a number of educational programs and competitions. The Space Building is critical to the Evergreen Museum's mission and to the future growth and success of the Evergreen Museum. *Id.* ¶ 12.

8. The Museum values the no rent provision at a value of up to \$300,000 per year, which is the amount of rent paid by the Museum on each of the other buildings it occupies - the Theater Building and the Aviation Building. Such payments are made to the owner of those buildings, Affordable Mid Coast Housing. Therefore, the "no-rent" provision on a thirty-year lease on the Space Building would potentially be worth millions of dollars in cost savings over a thirty-year period. *Id.* ¶ 13.

9. TFEC has agreed to waive, release and forgive the Museum of a contested \$1.7 million property tax obligation for past due property taxes imposed by the Yamhill County Tax Assessor. While the Museum adamantly denies its responsibility for payment of the past due property taxes, this remains a contested issue that may resurface if the MKSF assets are sold to any buyer other than TFEC. The final waiver and release of this claim will avoid more costs and distraction in contesting this issue. *Id.* ¶ 14.

10. The sale of MKSF assets to TFEC will also provide significant intangible benefits to the Evergreen Museum. Steven Down will personally become part of the Evergreen Museum's plans and efforts to increase its fundraising, relying upon Mr. Down's expertise and the expertise of TFM employees to help the Evergreen Museum grow a critical component of its future operations. *Id.* ¶ 15.

11. The plans to build and operate a hotel on the Museum campus, according to TFEC, will bring more visitors to the Evergreen Museum, raise the Evergreen Museum profile, and result in more visitor revenue for the Evergreen Museum. *Id.* ¶ 16.

12. The transition of certain special events and activities from the Evergreen Museum to TFEC will allow the Evergreen Museum to engage in additional cost-cutting, mission-focused operations without affecting the services and programs the Evergreen Museum provides to the community. *Id.* ¶ 17.

13. None of the benefits described above would be realized if the MKSF assets were sold to GemCap pursuant to its recent offer. GemCap is a creditor. As of today, GemCap has not worked with Evergreen Museum and has shown no inclination to work with the museum as a partner in growing the Museum Campus or the Evergreen Museum profile and business. The sale of the MKSF assets to GemCap would result in a loss of millions of dollars in donations to the Museum, the loss of marketing support, and the potential loss of a hotel on the Museum Campus. The sale of MKSF assets to GemCap may also result in millions of dollars in exposure to future costs including, but not limited to, rent payments on the Space Building. *Id.* ¶ 18.

ARGUMENT AND JOINDER IN OTHER OBJECTIONS

14. For the reasons set forth above, a sale to GemCap would have negative consequences for the Evergreen Museum. The museum understands the Court's desire that a sale be consummated as soon as possible – and still expects the TFEC sale to close as scheduled, on or before the August 20, 2016 deadline. However, the museum objects to any sale of the MKSF assets to GemCap, and respectfully submits that any sale transaction with GemCap should not be entered into hastily even if the August 20 deadline should pass.

15. The Evergreen Museum also joins in and adopts the arguments made by the Chapter 7 Trustee (Doc. 124) and the United States Trustee (Doc. 123) in their objections, as well as those objections to a sale to GemCap set forth on the record at the hearing held before the Court on July 5, 2016.

16. Finally, the Evergreen Museum also believes the notice of the last-minute credit bid by GemCap (of which the museum was unaware until July 5, 2016 and which was not formally noticed until August 4, 2016 (*see* Notice of Filing of Competing Bid, Doc. 111, and related Notice of Hearing, Doc. 115)), was insufficient to provide due process to all parties in interest pursuant to Fed. R. Bankr. P. 2002(a)(2).

CONCLUSION

For all the above reasons, the Evergreen Museum respectfully requests that the Court not approve a sale of the MKSF assets to GemCap at this time, but instead provide whatever reasonable time is required to allow TFEC to close the sale of the MKSF assets.

DATED: August 17, 2016

LEONARD LAW GROUP LLC

By: /s/ Timothy A. Solomon
Justin D. Leonard, OSB 033736
Timothy A. Solomon, OSB 072573
Counsel for Evergreen Aviation and
Space Museum and the Captain Michael
King Smith Education Institute, an Oregon
nonprofit corporation

Justin D. Leonard, OSB 033736

Direct: 971.634.0192

Email: jleonard@LLG-LLC.com

Timothy A. Solomon, OSB 072573

Direct: 971.634.0194

Email: tsolomon@LLG-LLC.com

LEONARD LAW GROUP LLC

111 SW Columbia, Ste. 1100

Portland, Oregon 97201

Fax: 971.634.0250

Counsel for Evergreen Aviation and
Space Museum and the Captain Michael
King Smith Education Institute, an Oregon
nonprofit corporation

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Case No. 16-30233-rlld11

The Michael King Smith Foundation,

Debtor.

**DECLARATION OF ANN WITSIL IN
SUPPORT OF EVERGREEN MUSEUM'S
OBJECTION TO GEMCAP PROPOSAL
TO ACQUIRE ASSETS**

I, Ann Witsil, hereby declare that the following is true to the best of my information and belief:

1. I am the Interim Executive Director of Evergreen Aviation and Space Museum and the Captain Michael King Smith Educational Institute ("Evergreen Museum"). I have held this position since September 1, 2015.

2. In that capacity I am responsible for the operations of the Evergreen Museum and the Wings and Waves Waterpark, overseeing all staff and volunteer activities on and off campus as those activities relate to Evergreen Museum operations, establishing and supporting strategic relationships on behalf of the museum with community, regional and national entities, supporting board of directors development and services benefiting the Evergreen Museum aligned with its mission, and helping to secure resources needed to the support organization and all activities supporting its mission.

3. Prior to my work with Evergreen Museum I have served in executive leadership with US Bancorp and with Nike, Inc. for over 10 years, provided interim executive director services for eleven years in affiliation with the Nonprofit Association of Oregon with several regional nonprofit organizations, and have provided management consulting services for more than 20 years as founder of Catalyst Strategies.

4. I have met and worked with many new people who come from a variety of organizations, all of which are involved in or want to become involved in the Evergreen Museum's activities, classes, and programs.

5. I have seen first-hand how the Evergreen Museum has been and continues to be a valuable asset to the greater McMinnville community, the State of Oregon, to visitors to the Evergreen Museum, to educators, students from kindergarten through high school, and to the parents of these students.

6. I am aware of and familiar with the above-captioned matter. I am familiar with the proposed acquisition of assets owned by the Michael King Smith Foundation ("MKSF") to the Falls Event Center ("TFEC").¹ I am very familiar with the terms of the TFEC proposal and all of the agreements and commitments relating to the proposed sale.

7. On July 11, 2016, at a Special Board Meeting, the Evergreen Museum Board of Directors approved the sale of the MKSF assets to TFEC and the Evergreen Museum-TFEC agreements that are related to the sale regarding TFEC's financial commitments to the Evergreen Museum and its commitments of intangible value to the Evergreen Museum.

8. Together with the Chief Financial Officer, Chief Operation Officer and Museum Board President, I have personally met and spoken with Steven Down, the principal owner of TFEC on a number of occasions regarding TFEC's interest in buying the MKSF assets,

¹ My reference to TFEC includes any TFEC-affiliated entities including, but not necessarily limited to, The Falls at McMinnville ("TFM") which, as I understand it, has been assigned and assumes the responsibilities of the Asset Purchase Agreement dated June 22, 2016.

partnering with the Evergreen Museum in the future, providing donations to the Evergreen Museum, and utilizing the MKSF assets to help the Evergreen Museum survive and thrive.

9. In my opinion, the sale of the MKSF assets to TFEC is the best possible outcome in this matter and will best serve the Museum's interests and the community's interest now and in the future. It's also my opinion that all other proposals by different buyers to acquire the MKSF assets that I became aware, including the recently submitted GemCap Lending I, LLC ("GemCap") proposal, would not bring the same advantages and synergies that will be realized with an Evergreen Museum-TFEC partnership. I offer the following facts, in support of my opinion.

10. A sale of MKSF assets to TFEC has a tangible value to the Museum of more than \$3 million in 2017 and 2018, almost \$7 million over the next seven years, and potentially in excess of \$20 million over a thirty-year period. These valuations do not account for the increase in business to the Museum based on the marketing and development plans of TFEC as described in this declaration.

11. TFEC has committed to making \$1.68 million in donations to the Evergreen Museum in 2017 and 2018. These donations become irrevocable upon closing of the sale and execution of a Donation Agreement (which is in final form and agreed upon by Evergreen Museum and TFEC and is waiting signature by the authorized representatives) and will be secured with collateral. TFEC has also committed to making donations to the Evergreen Museum of \$300,000 per year thereafter for up to thirty years, beginning in 2019. Those donations, combined, total \$10.68 million over thirty years.

12. TFEC has agreed to enter into a new lease on the Space Building with the Museum for thirty years at no rent. The Space Building is one of two buildings that holds and displays the vast majority of the Museum aircraft and artifacts, which is open to the general public seven days per week, and which holds and hosts a number of educational programs and

competitions. The Space Building is critical to the Evergreen Museum's mission and to the future growth and success of the Evergreen Museum.

13. The Museum values the no rent provision at a value of up to \$300,000 per year, which is the amount of rent paid by the Museum on each of the other buildings it occupies - the Theater Building and the Aviation Building. Such payments are made to the owner of those buildings, Affordable Mid Coast Housing. Therefore, the "no-rent" provision on a thirty-year lease on the Space Building would potentially be worth millions of dollars in cost savings over a thirty-year period.

14. TFEC has agreed to waive, release and forgive the Museum of a contested \$1.7 million property tax obligation for past due property taxes imposed by the Yamhill County Tax Assessor. While the Museum adamantly denies its responsibility for payment of the past due property taxes, this remains a contested issue that may resurface if the MKSF assets are sold to any buyer other than TFEC. The final waiver and release of this claim will avoid more costs and distraction in contesting this issue.

15. The sale of MKSF assets to TFEC will also provide significant intangible benefits to the Evergreen Museum. Steven Down will personally become part of the Evergreen Museum's plans and efforts to increase its fundraising, relying upon Mr. Down's expertise and the expertise of TFM employees to help the Evergreen Museum grow a critical component of its future operations.

16. The plans to build and operate a hotel on the Museum campus, according to TFEC, will bring more visitors to the Evergreen Museum, raise the Evergreen Museum profile, and result in more visitor revenue for the Evergreen Museum.

17. The transition of certain special events and activities from the Evergreen Museum to TFEC will allow the Evergreen Museum to engage in additional cost-cutting, mission-focused operations without affecting the services and programs the Evergreen Museum provides to the community.

18. None of the benefits I have described in this declaration would be realized if the MKSF assets were sold to GemCap pursuant to its recent offer. GemCap is a creditor. As of today, GemCap has not worked with Evergreen Museum and has shown no inclination to work with the museum as a partner in growing the Museum Campus or the Evergreen Museum profile and business. The sale of the MKSF assets to GemCap would result in a loss of millions of dollars in donations to the Museum, the loss of marketing support, and the potential loss of a hotel on the Museum Campus. The sale of MKSF assets to GemCap may also result in millions of dollars in exposure to future costs including, but not limited to, rent payments on the Space Building.

19. For the reasons stated above and in the accompanying Objection filed by Evergreen Museum counsel, the Evergreen Museum objects to the GemCap offer and urges this Court to provide whatever reasonable time is required to allow TFEC to close the sale of the MKSF assets.

I make this statement under penalty of perjury under the laws of the United States.

Dated this 17th day of August, 2016.

/s/ Ann Witsil

Ann Witsil, Interim Executive Director
Evergreen Aviation and Space Museum

CERTIFICATE OF SERVICE

I certify that on the date below, I caused this Objection of Evergreen Aviation and Space Museum and The Captain Michael King Smith Educational Institute to Proposed Sale of Assets to GemCap Lending I, LLC to be served on interested parties requesting notice through the Court's CM/ECF system.

DATED: August 17, 2016

By: /s/ Timothy A. Solomon
Timothy A. Solomon, OSB 072573